

# OFFICE OF THE ATTORNEY GENERAL

85-00498



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SEP 3 1985

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Honorable Yetta G. Samford, Jr.  
Attorney for Lee County Commission  
P. O. Box 2345  
Opelika, Alabama 36803-2345

Sheriffs - Retirement -  
Retirement Systems - Funds

If Lee County chooses to make  
retirement payments to the  
Sheriff under Code of Alabama  
1975, Section 36-22-40 et seq.,  
it must make payments of \$750.00  
per month as set out in Section  
36-22-43.

Dear Mr. Samford:

Reference is made to the request of the Lee County  
Commission for the opinion of the Attorney General on the  
following question:

"BE IT RESOLVED, by the Lee County  
Commission that County Attorney, Yetta  
Samford, is hereby authorized and directed  
to request from the Attorney General of  
Alabama, an opinion as to whether Section  
36-22-43, 1975 Code of Alabama, as amended,  
authorizes the Governing Body of a County  
to pay to an eligible sheriff an amount less  
than Seven Hundred Fifty and No/100 Dollars  
(\$750.00) per month."

Code of Alabama 1975, Section 36-22-40 through Section  
36-22-45 provides for the Sheriffs' Retirement System with

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payments to be made by the counties. These provisions are a codification of Act No. 1231, Acts of Alabama 1975, p. 2591. In Lowe v. Lee County, Civil Action No. CV-80-230 (December 30, 1982), the Lee County Circuit Court declared that portion of Act No. 1231 that exempted Lee County from the provisions of the Act unconstitutional and void.

Regarding payments to sheriffs under the Sheriffs' Retirement System, Code of Alabama 1975, Section 36-22-43 as amended states:

Those persons eligible under either section 36-22-40 or 36-22-41 shall receive payments equal to \$750.00 per month, but in no event shall any person receive payments pursuant to both the retirement and disability provisions simultaneously. Said payments shall be paid from the general fund of the county in which said eligible persons reside upon their retirement or disability. However, this article is permissive in nature and the governing body of said county may decline to make such payments. In such event the full amount of any contributions made shall be paid back to the eligible sheriff.

It is true that the above provision states that the article is permissive in nature. However, a reading of the entire provision indicates that this permissive nature applies to the choice of the county to make payments under the system or to return the contributions made by the sheriff to him.

Section 36-22-43 as quoted above states that those persons eligible under the provisions of the Sheriffs' Retirement System Act "shall receive payments equal to \$750.00 per month." (Emphasis added) The use of the word "shall" generally indicates a mandatory intent unless a convincing argument to the contrary is made. Sierra Club v. Train, 557 F.2d 485 (5th Cir. 1977). My research does not reveal any provision in the article that would allow a county to make lesser payments to a sheriff. Therefore, it is the opinion of the Attorney General that if the Lee County Commission chooses to make retirement payments to the sheriff under Section 36-22-40, et seq., the payments must be in the amount of \$750.00 per month.

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Attorney for Lee County Commission  
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The opinion to you as the attorney for the Lee County Commission dated July 24, 1985, is hereby modified by the conclusion reached herein.

If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

CHARLES A. GRADDICK  
Attorney General

By:

A handwritten signature in cursive script, reading "Lynda K. Oswald".

LYNDA K. OSWALD  
Assistant Attorney General

LKO/dn